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SENATE BILL 364

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Vernon D. Asbill

AN ACT

RELATING TO PUBLIC SCHOOLS; LIMITING CONFLICTS OF INTEREST IN
MEMBERSHIP OF LOCAL SCHOOL BOARDS AND GOVERNING AUTHORITIES OF
CHARTER SCHOOLS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 22-5-5 NMSA 1978 (being Laws 1967,
Chapter 16, Section 29) is amended to read:

"22-5-5. COMPENSATION--PROHIBITED EMPLOYMENT.--

A. The members of a local school board shall serve
without compensation.

B. ~~[No]~~ A member of a local school board shall not
be employed in any capacity by a school district ~~[governed by~~
~~that local school board]~~ or a locally chartered or state-
chartered charter school and shall not be a member of a
governing body of a locally chartered or state-chartered

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1 charter school during the term of office for which the member
2 was elected or appointed."

3 Section 2. Section 22-8B-4 NMSA 1978 (being Laws 1999,
4 Chapter 281, Section 4, as amended) is amended to read:

5 "22-8B-4. CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--
6 OPERATION.--

7 A. A charter school shall be subject to all federal
8 and state laws and constitutional provisions prohibiting
9 discrimination on the basis of disability, race, creed, color,
10 gender, national origin, religion, ancestry or need for special
11 education services.

12 B. A charter school shall be governed by a
13 governing body in the manner set forth in the charter; provided
14 that a governing body shall have at least five members; and
15 provided further that no member of a governing body for a
16 charter school that is initially approved on or after July 1,
17 2005 or whose charter is renewed on or after July 1, 2005 shall
18 serve on the governing body of another charter school or on a
19 local school board.

20 C. A charter school shall be responsible for:

21 (1) its own operation, including preparation
22 of a budget, subject to audits pursuant to the Audit Act; and

23 (2) contracting for services and personnel
24 matters.

25 D. A charter school may contract with a school

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1 district, a university or college, the state, another political
2 subdivision of the state, the federal government or one of its
3 agencies, a tribal government or any other third party for the
4 use of a facility, its operation and maintenance and the
5 provision of any service or activity that the charter school is
6 required to perform in order to carry out the educational
7 program described in its charter. Facilities used by a charter
8 school shall meet the standards required pursuant to Section
9 22-8B-4.2 NMSA 1978.

10 E. A conversion school chartered before July 1,
11 2007 may choose to continue using the school district
12 facilities and equipment it had been using prior to conversion,
13 subject to the provisions of Subsection F of this section.

14 F. The school district in which a charter school is
15 geographically located shall provide a charter school with
16 available facilities for the school's operations unless the
17 facilities are currently used for other educational purposes.
18 An agreement for the use of school district facilities by a
19 charter school may provide for reasonable lease payments;
20 provided that the payments do not exceed the sum of the lease
21 reimbursement rate provided in Subparagraph (b) of Paragraph
22 (1) of Subsection I of Section 22-24-4 NMSA 1978 plus any
23 reimbursement for actual direct costs incurred by the school
24 district in providing the facilities; and, provided further,
25 that any lease payments received by a school district may be

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1 retained by the school district and shall not be considered to
2 be cash balances in any calculation pursuant to Section 22-8-41
3 NMSA 1978. The available facilities provided by a school
4 district to a charter school shall meet all occupancy standards
5 as specified by the public school capital outlay council. As
6 used in this subsection, "other educational purposes" includes
7 health clinics, daycare centers, teacher training centers,
8 school district administration functions and other ancillary
9 services related to a school district's functions and
10 operations.

11 G. A locally chartered charter school may pay the
12 costs of operation and maintenance of its facilities or may
13 contract with the school district to provide facility operation
14 and maintenance services.

15 H. Locally chartered charter school facilities are
16 eligible for state and local capital outlay funds and shall be
17 included in the school district's five-year facilities plan.

18 I. A locally chartered charter school shall
19 negotiate with a school district to provide transportation to
20 students eligible for transportation under the provisions of
21 the Public School Code. The school district, in conjunction
22 with the charter school, may establish a limit for student
23 transportation to and from the charter school site not to
24 extend beyond the school district boundary.

25 J. A charter school shall be a nonsectarian,

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1 nonreligious and non-home-based public school.

2 K. Except as otherwise provided in the Public
3 School Code, a charter school shall not charge tuition or have
4 admission requirements.

5 L. With the approval of the chartering authority, a
6 single charter school may maintain separate facilities at two
7 or more locations within the same school district; but, for
8 purposes of calculating program units pursuant to the Public
9 School Finance Act, the separate facilities shall be treated
10 together as one school.

11 M. A charter school shall be subject to the
12 provisions of Section 22-2-8 NMSA 1978 and the Assessment and
13 Accountability Act.

14 N. Within constitutional and statutory limits, a
15 charter school may acquire and dispose of property; provided
16 that, upon termination of the charter, all assets of the
17 locally chartered charter school shall revert to the local
18 school board and all assets of the state-chartered charter
19 school shall revert to the state, except that, if all or any
20 portion of a state-chartered charter school facility is
21 financed with the proceeds of general obligation bonds issued
22 by a local school board, the facility shall revert to the local
23 school board.

24 O. The governing body of a charter school may
25 accept or reject any charitable gift, grant, devise or bequest;

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1 provided that no such gift, grant, devise or bequest shall be
2 accepted if subject to any condition contrary to law or to the
3 terms of the charter. The particular gift, grant, devise or
4 bequest shall be considered an asset of the charter school to
5 which it is given.

6 P. The governing body may contract and sue and be
7 sued. A local school board shall not be liable for any acts or
8 omissions of the charter school.

9 Q. A charter school shall comply with all state and
10 federal health and safety requirements applicable to public
11 schools, including those health and safety codes relating to
12 educational building occupancy.

13 R. A charter school is a public school that may
14 contract with a school district or other party for provision of
15 financial management, food services, transportation,
16 facilities, education-related services or other services. The
17 governing body shall not contract with a for-profit entity for
18 the management of the charter school.

19 S. To enable state-chartered charter schools to
20 submit required data to the department, an accountability data
21 system shall be maintained by the department.

22 T. A charter school shall comply with all
23 applicable state and federal laws and rules related to
24 providing special education services. Charter school students
25 with disabilities and their parents retain all rights under the

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1 federal Individuals with Disabilities Education Act and its
2 implementing state and federal rules. Each charter school is
3 responsible for identifying, evaluating and offering a free
4 appropriate public education to all eligible children who are
5 accepted for enrollment in that charter school. The state-
6 chartered charter school, as a local educational agency, shall
7 assume responsibility for determining students' needs for
8 special education and related services. The division may
9 promulgate rules to implement the requirements of this
10 subsection."

11 Section 3. APPLICABILITY.--The provisions of this act
12 apply to local school board or charter school governing body
13 members whose terms begin on or after the effective date of
14 this act.

15 Section 4. EMERGENCY.--It is necessary for the public
16 peace, health and safety that this act take effect immediately.